the expense incurred by the plaintiff of sending his two children to a neighbour so that they can be properly looked after. It is not challenged by the defendant that the plaintiff is paying $100 p.m. to his neighbour to look after, clothe and feed the two children. The eldest child who is now 12 years old does not require much looking after as he is attending school and will presumably be working in 4 years time. The youngest child is one year old and will have to be looked after for some time. If the children are not looked after by the neighbour the alternative would be for the plaintiff to engage a servant to look after them and that would cost in the neighbourhood of $100 p.m. also. It is highly probable that the plaintiff will remarry soon and when he does his new wife will doubtless look after his two children thus relieving him of the expense of having them looked after by the neighbour. Another factor to be taken into consideration is the uncertainty of life of the children. Secondly the extra expense the plaintiff is now incurring in having to take all his meals out. In his Statement of Claim he claims that the extra expense is $30 p.m. while in his evidence he says it is $50 p.m. I will take into consideration that his extra expense is $30 p.m. Here again I have to take into consideration the possibility of his remarrying and also the uncertainty of his life.

I have as I have said to assess the damages in the best way I can and in addition to the factors which I have set out I have also taken into consideration the fact that the plaintiff and the two children would be receiving a lump sum payment. Taking all the considerations into account I have come to the conclusion that a fair assessment of damages under section 12 of the Civil Law Ordinance would be $10,000.

From this sum of $10,000 must be deducted the two sums awarded under section 7 of the Civil Law Ordinance, namely $1,500 and $2,500 leaving a sum of $6,000 which is to be apportioned as follows:—

Tan Hong Hwee, widower of the deceased	$3,500
Tan Oh Huan, 12 years old son of the deceased	750
Tan Sam Hock, 1 year old son of the deceased	1,750

There will therefore be judgment for the plaintiff in the sum of $10,750 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy, Dunbar & Chung; Battenberg & Talma.*

DADHI RAL YADO v. MUKAT RAI

[A.C.J. (Wee Chong Jin J.) October 31, 1957]

[Singapore — District Court Appeal No. 14 of 1957]

Landlord and Tenant — "Premises" — Meaning of — Onus of proof as to when a particular building was built — Standard rent — No evidence of previous letting — Control of Rent Ordinance — Purpose of.

Two points were raised in this appeal: (i) the appellant (tenant) contended that the trial Judge was wrong in law in that he in effect held that the premises in question were not premises subject to the provisions of the Control of Rent Ordinance by holding that the onus of proving that the said premises were subject to the provisions of the Ordinance lay on the appellant, and by holding that the appellant had failed to discharge this onus; (ii) the appellant contended that the trial Judge was wrong in law in that he in effect held that the arrears of rent claimed by the respondent at the monthly rate of $30 was in excess of that legally recoverable by the respondent by virtue of the provisions of the Ordinance.

Held: (1) the present Control of Rent Ordinance and the prior Ordinances dealing with the same subject matter were passed for the purpose of preventing *inter alia* the rent of all buildings in the Colony being increased or standing at a higher amount than that prevailing as at the 1st day of August 1939, or if first let subsequent to that date, as at the date of the first letting. The purpose was *inter alia* to intervene between landlord and tenant in order to control the rent payable to the landlord. On the true construction of the whole of the definition of "premises", the legislature has placed the onus of proving that a particular building was built or completed after the 7th day of September 1947, on the landlord;

(2) the onus in this case lay in the first instance on the appellant (tenant) to prove as to what was the standard rent but in the circumstances here he had discharged that onus and established a *prima facie* case and no attempt had been made by the respondent to discharge that *prima facie* case.

Appeal allowed.

Cases referred to:—

(1) *White v. Bembridge*, (1935) 1 K.B. 244.
(2) *Keane v. Clarke*, (1951) 2 K.B. 732.
(3) *Annamalai v. Yeoh Kee Tin*, (1957) M.L.J. 9.
(4) *Abrath v. North-Eastern Rly. Co.* 49 L.T. 618.
(5) *Bolger v. Daley*, (1925) 2 I.R. 42.

DISTRICT COURT APPEAL.

G. J. Okell for the appellant.

K. K. Bezboruah for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: — This is an appeal from the judgment of the learned District Judge in an

action brought by the respondent to recover arrears of rent respecting a room at No. 70 Chander Road, Singapore. The relevant facts are these. The respondent became the tenant of the room in question on the 1st November 1955 paying to his immediate landlord rent at the monthly rate of $8.40. Prior to this, the room had been let by the respondent's immediate landlord to another tenant at the same monthly rent. On the 8th December 1955 the respondent sublet the whole of this room to the appellant. The respondent says that the agreed rent was $30 per month payable in advance on the 8th day of each calendar month whereas the appellant says the agreed rent was $23 payable in arrears. The trial Judge accepted the respondent's version and this finding of fact is not now disputed.

No evidence was called by either party as to when No. 70 Chander Road was built nor was evidence called as to the rent of No. 70 Chander Road or of the room in question as at 1st August 1939. Neither was any evidence called as to the date when and the rent at which No. 70 Chander Road or of the room in question was first let after 1st August 1939. The importance of such evidence, if available, will appear hereafter.

The trial Judge gave judgment for the respondent for $360 being arrears of twelve months' rent at the monthly rate of $30/-.

This appeal raises two points. Firstly, the appellant contends that the trial Judge was wrong in law in that he in effect held that the premises No. 70 Chander Road were not premises subject to the provisions of the Control of Rent Ordinance (Cap.242) by holding that the onus of proving that the said premises were subject to the provisions of the Ordinance lay on the appellant (tenant) and by holding that the appellant had failed to discharge this onus. Secondly, the appellant contends that the trial Judge was wrong in law in that he in effect held that the appellant had failed to prove that the arrears of rent claimed by the respondent at the monthly rate of $30 was in excess of that legally recoverable by the respondent by virtue of the provisions of the Ordinance.

It is convenient to set out now the provisions of section 3(1) and the definition of the word "premises" in section 2 of the Ordinance. "Premises" is defined in section 2 as follows:

> ".....means any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building whether of permanent or temporary construction in which persons are employed or work and any part of any such building let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord but does not include any new building built or completed after the 7th day of September, 1947."

Section 3(1) provides as follows:

> "3.— (1) Save as hereinafter in this Ordinance provided it shall be unlawful for any landlord to increase or attempt to increase or to receive or recover a rent in respect of any tenancy of premises in excess of the rent fixed by an order of the Board, or, if no order has been made, in excess of the standard rent."

As regards the first point raised, counsel for the appellant submits that by virtue of the definition of "premises" in section 2 *prima facie* the premises No. 70 Chander Road are controlled premises and therefore the onus of proving that No. 70 Chander Road was built or completed after the 7th day of September 1947 was on the respondent and that as no evidence was called by the respondent on this point he had failed to discharge that onus.

As regards the second point raised, counsel for the appellant submits that in respect of the rent of the room in question the evidence of the respondent's immediate landlord, in cross-examination, established that there was a prior letting of the room by him to a previous tenant at the rent of $8.40 per month and that the proper inference to be drawn from this evidence and from the fact that the respondent was paying his immediate landlord the same rent of $8.40 for the room in question was that the standard rent of the room was $8.40 in the absence of evidence of previous lettings. If this submission is correct then counsel for the appellant says that by virtue of section 3(1) the respondent can only recover rent at the rate of $8.40 per month notwithstanding that the trial Judge had accepted the respondent's evidence that the rent agreed upon by the parties was $30 a month.

Counsel for the appellant cited the case of *White v. Bembridge*[1], in support of the first point raised. The facts of that case are set out in the judgment of Lord Hanworth M.R. at page 246 as follows:

> "The action was brought to recover two quarters' rent due on December 25, 1933, and Lady Day, 1934, respecting the premises known as 90 Lordship Lane, East Dulwich. The lease was dated June 6, 1922, and was for a term of twenty-one years at a rent which by seven yearly periods rose from £75 to £85, and then to £95 for the remainder of the term. The amount sued for was £42-10s., based on the appropriate rent due under

the indenture of lease. There is no doubt, and the facts are not in dispute, that the defendant is the occupier of 90 Lordship Lane and that under the terms of the lease he is liable to pay this sum in the circumstances in which he is being sued. But he says in his defence that by virtue of the Rent Restriction Acts the landlords are not entitled to recover the full amount claimed because rateable value of the premises is less than £45. He says that he can establish the fact that the premises are still controlled and still subject to the Rent Restriction Acts."

The case depended on the effect of section 1(2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, which provides:

"As from the twenty-ninth day of September, 1933, the principal Acts shall not apply to any dwelling-house unless it is a dwelling-house to which they applied immediately before the passing of this Act or then formed part of such a dwelling-house, and it is also a dwelling-house of which either the annual amount of the recoverable rent on the appointed day or the rateable value on the appointed day did not exceed — (a) in the metropolitan police district or the City of London, forty-five pounds."

Lord Hanworth M.R., at page 247, said:

"In order that the principal Acts shall continue to apply, the conditions in the proviso must be complied with.

It is plain that the opening words of the sub-section — namely, that the principal Acts shall not apply, are an over-riding statement of the law, and restore the relationship of landlord and tenant to the contract made between them unless the tenant can establish that the case falls within the proviso."

Counsel for the appellant submits that on the analogy of *White v. Bembridge, supra,* by virtue of the statutory definition of "premises" in section 2, the Control of Rent Ordinance applies to all premises unless the landlord can establish that the premises in question fall within the proviso contained in the definition of "premises." Reliance was also placed on section 104 of the Evidence Ordinance which provides as follows:

"104. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

In support of the second point raised, counsel for the appellant cited the case of *Keane v. Clarke,*[2] to which I will refer later on in this judgment.

Counsel for the respondent on the other hand submits that the onus of proof that the premises were erected before 7th September, 1947, and that the first letting of the room in question after the 1st day of August, 1939, was at the rent of $8.40 rested throughout the case on the appellant and that as no evidence was called on these issues by the appellant he had failed to discharge that onus. In support, counsel for the respondent relied on the general rule that the party who asserts the affirmative must prove that fact and cited the cases of *Annamalai v. Yeoh Kee Tin,*[3] and *Abrath v. The North-Eastern Railway Company,*[4] in support of this general rule. Reliance was also placed on the terms of section 7(1) of the English Rent Restriction Act of 1938 which provides as follows:

"7. — (1) If any question arises in any proceedings whether the principal Acts apply to a dwelling-house, it shall be deemed to be a dwelling-house to which those Acts apply unless the contrary is shown."

It is submitted that as there was no similar provision in our Rent Control Ordinance, the general rule above referred to applied and the onus of proof remained on the appellant throughout the case.

I will now deal with the first point. The first part of the definition of "premises" in section 2 plainly brings within the purview of the Ordinance all dwelling houses, flats, factories, warehouses, offices, counting houses, shops, schools and any other building whether of permanent or temporary construction in which persons are employed or work and any part of any such building let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord. The second part of the definition of "premises" namely — "but does not include any new building built or completed after the 7th day of September, 1947" is the proviso or exception to the first part of the definition and takes out of the purview of the Ordinance all new buildings built or completed after the 7th day of September, 1947. It must be noted that the Ordinance and the prior Ordinances dealing with the same subject matter were passed for the purpose of preventing *inter alia* the rent of all buildings in the Colony being increased or standing at a higher amount than that prevailing as at the 1st day of August 1939, or if first let subsequent to that date, as at the date of the first letting. The purpose was *inter alia* to intervene between landlord and tenant in order to control the rent payable to the landlord. In my opinion, on the true construction of the whole of the definition of "premises", the legislature has placed the onus of proving that a particular building was built or completed after the 7th day of September, 1947, on the landlord. I agree with the

submission of counsel for the appellant that on the analogy of *White v. Bembridge, supra,* it is for the respondent (landlord) to establish that No. 70 Chander Road was built or completed after the 7th day of September, 1947. In other words, I am of the opinion that the legislature has brought within the purview of the Ordinance all dwelling houses, etc., and that in order that the Ordinance shall not apply to any dwelling house, etc., the condition in the second part of the definition must be complied with and it is for the landlord to establish that the case falls within the second part of the definition. The authorities cited by counsel for the respondent are therefore not directly in point. I also do not think there is anything in the respondent's argument based on section 7 of the Rent and Mortgage Interest Restrictions Act, 1938, whereby "If any question arises in any proceedings whether the principal Acts apply to a dwelling-house it shall be deemed to be a dwelling-house to which those Acts apply unless the contrary is shown." The scheme of the English Rent Acts is so entirely different to our Ordinance that I can find no good reason to hold that because there is no similar provision in our Ordinance it follows that the onus of proving that any premises are subject to the provisions of the Ordinance must necessarily lie on the tenant.

I will now deal with the other ground of appeal. It is clear that, assuming the Ordinance applies, by virtue of section 3(1) the respondent can only recover the standard rent of the room in question. Standard rent is defined in section 2 to mean *inter alia*

> "if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of the premises as at the 1st day of August, 1939; or in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the 1st day of August, 1939;"

As I have stated at the outset there is no evidence as to the rent at which the room was let as at 1st August, 1939, nor is there any evidence as to the date when and the rent at which the room was first let after the 1st August 1939. In such circumstances the question is whether the respondent is entitled to recover rent at the agreed rate of $30 a month or is the respondent only entitled to recover at the rate of $8.40 a month which was the rent at which the room was let to a previous tenant of the respondent's immediate landlord. In the case of *Keane v. Clarke,*[2] a tenant paying rent at the rate of 35s. a week sued to recover rent overpaid alleging that the standard rent was 22s. 6d. The tenant proved a previous letting by her landlord to a former tenant 5 years before she went into occupation in 1949 at the rent of 22s. 6d. and after that to another tenant before her at the same rent of 22s. 6d. It was held by the Court of Appeal that the onus lay in the first instance on the plaintiff tenant, that in the circumstances she had discharged it and established a *prima facie* case and that no attempt had been made by the defendant landlord to displace that *prima facie* case. The Court of Appeal also came to the conclusion that in the circumstances the Court must draw the inference that 22s. 6d. was the standard rent ("standard rent" in the English 1939 Act is defined as being the rent at which the premises were let on 1st September 1939, or, if not then let the rent at which they were last let before that date. or if not then let, the rent at which they were first let after that date). In the course of his judgment, Evershed M.R. set out the leading judgment in the Irish Supreme Court of Kennedy C.J. in the case of *Bolger v. Daley,*[5] in an action by the landlord against the tenant for rent of a dwelling-house and the tenant's defence was that the rent charged was in part irrecoverable. The evidence in the Irish case showed a letting of the dwelling-house on 1st November 1918 at a rent of £50 a year which, if it was the standard rent, brought the tenancy within the Irish Rent Act. No other evidence as to any previous letting of the dwelling-house having ever been made was given on the part of either party. It was contended on the part of the plaintiff (landlord) that the onus was upon the defendant (tenant) of showing whether or not the premises were let on 3rd August 1914, and, if not then let, when they were first let after that date and whether such letting was at a rent within the prescribed limits of application of the statute and, if so, what was the amount of the standard rent according to the definition in the statute. Kennedy C.J. held that on the evidence before the Court, there was a letting on 1st November 1918,

> "which, no earlier letting having been proved, appears to be a first letting, and at a rent within the limits of application of the Act which gives us the statutory 'standard rent'. In my opinion, in that state of facts, the onus rested on the plaintiff to displace the *prima facie* case made by the defendant bringing the premises within the Act. No attempt has been made by the plaintiff to displace that *prima facie* case. We must, therefore, assume that the premises were let at a standard rent within the Act, namely £50 a year, from which it follows that the decision of the trial Judge cannot be sustained."

Evershed M.R. in his judgment accepted the reasoning of Kennedy C.J. and said that he thought that reasoning should be applied to the case before him.

I have set out at length these authorities as in my opinion the reasoning of Kennedy C.J. in the Irish case which was accepted by Evershed M.R. in the English Court of Appeal case is equally applicable to the case before me. In my opinion the onus in this case lies in the first instance on the appellant (tenant) but in the circumstances he has discharged that onus and established a *prima facie* case and that no attempt had been made by the respondent (landlord) to discharge that *prima facie* case.

In the circumstance of this case therefore, I am of the opinion that the Court must draw the inference that $8.40 was the standard rent of the room in question and that accordingly the respondent can only recover rent at the rate of $8.40 per month in respect of the period claimed by him.

I allow this appeal and the judgment of the Court below must be varied to bring it into accord with the above finding. The respondent is to pay the appellant's costs of this appeal.

Appeal allowed.

Solicitors: *Braddell Bros., K. K. Bezboruah.*

MOHAMED BIN ALLAPITCHAY & ORS. v. REG.

[C. C. A. (Whyatt C.J., Knight and Tan Ah Tah JJ.) December 13, 1957]

[Singapore — Criminal Appeal No. 25 of 1957]

Criminal Law and Procedure — Police report — Admissibility of — Dying declaration — Discretion of Appellate Court to allow — Evidence Ordinance (Cap.4), s.32.

This was an appeal against the conviction of the accused for the murder of one Abdul Rahim. The facts of the case are briefly as follows: The murdered man was a stall-holder at the Telok Ayer Market and it was his habit to sleep at night at his stall which was situated a few yards away from the road which runs alongside the market at this point. Several other neighbouring stall-holders and their assistants also used to sleep at their stalls, in particular, a man named Yusoff and a man named Krishnan, both of whom gave important evidence for the prosecution at the trial. On the night of the murder, the deceased went to sleep at his stall sometime before midnight; several other stall-holders, among them Yusoff and Krishnan, did likewise. At 3.45 a.m. Yusoff and Krishnan were woken up by the noise of the deceased shouting, "Matamata (police), Mohamed has stabbed me." They saw the deceased a few yards away on the road, pursuing 3 men who were running away from the scene. Yusoff and Krishnan joined the chase, Yusoff following a few yards behind the deceased, and Krishnan a few yards behind Yusoff. The latter recognised the three men as Mohamed, Hassan and Haja Mohideen, the three appellants, as they ran towards the corner of the road before disappearing from view. The deceased, who had been mortally injured, collapsed after running 100 yards and Yusoff and Krishnan broke off the chase to help him. When they asked him who had stabbed him, the deceased replied, "Mohamed stabbed me and Hassan and Haja Mohideen were with him." A telephone message was sent to the Radio Police Patrol and in a few minutes a Radio Police Van arrived and a Sergeant began to take down a statement from the deceased. In the statement the deceased said that he had been woken up by four Indians, whom he named as Mohamed, Hassan, Haja Mohideen and Kakak, and that Mohamed had stabbed him in the stomach with a knife. Shortly afterwards the ambulance arrived and the deceased was taken to the General Hospital where he fixed his thumb impression to his statement and died shortly afterwards.

On appeal it was argued by counsel for the appellants that (a) the certified copy of the statement made by the deceased to the Radio Police Sergeant was inadmissible under sections 114 and 116 of the Criminal Procedure Code, as it was not a first report to a police station, and that in any event it could only be admitted for the limited purpose of contradicting or corroborating the person making the statement, and (b) that if the statement was to be regarded as dying statement under section 32 of the Evidence Ordinance it was incomplete.

Held: (1) the statement if admitted as a police report under sections 114 and 116 of the Criminal Procedure Code could only be used for the purpose of contradicting or corroborating the testimony of the person who made it and since Abdul Rahim had died before the proceedings began, it was obvious that the question of contradicting or corroborating his evidence in the present case could not arise;

(2) if the statement was admitted as a dying declaration the jury should have been warned that the statement was not made on oath and subjected to cross-examination and as this was not done in this case it amounted to a serious misdirection.

Cases referred to:—

(1) *Teper v. R.*, (1952) A.C. 480.
(2) *R. v. Waugh*, (1950) A.C. 203.
(3) *R. v. Bedingfield*, 14 Cox C.C. 341.
(4) *R. v. Christie* (1914) A.C. 545.

COURT OF CRIMINAL APPEAL.

N. C. Goho for the appellants.

T. A. Mahony (Crown Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by:

Whyatt C.J.: — In this case the appellants, Mohamed s/o Allapitchay, Hassan bin Mohamed and Haja Mohideen s/o Shaik Dawood, appeal